

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 HALLMARK CARDS, INC.,)
5)
6 Plaintiff,))
7 vs.) Case No. 08-00840-CV-W-ODS
8)
9 MONITOR CLIPPER PARTNERS, LLC.,)
10 et al.) November 9, 2012
11) Kansas City, Missouri
12 Defendants.)

13 TRANSCRIPT OF JURY TRIAL PROCEEDINGS
14 BEFORE THE HONORABLE ORTRIE D. SMITH
15 UNITED STATES SENIOR DISTRICT JUDGE

16 VOLUME 5 OF 10

17 APPEARANCES:
18 FOR THE PLAINTIFF:

19 Mr. Charles W. German
20 Mr. Daniel E. Blegen
21 Rouse Hendricks German May PC
22 1201 Walnut, 20th Floor
23 Kansas City, Missouri 64106
24
25 Mr. John C. Aisenbrey
Stinson Morrison Hecker LLP
1201 Walnut Street, Suite 2800
Kansas City, Missouri

(APPEARANCES CONTINUED ON NEXT PAGE)

21 COURT REPORTER:

22 Ms. Cynthia M. Johnson, RMR
23 U.S. Court Reporter
24 400 East 9th Street, Room 8552
25 Kansas City, Missouri 64106
(816)512-5657

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(APPEARANCES CONTINUED)

FOR THE DEFENDANTS:

Mr. David F. Oliver
Ms. Stacey R. Gilman
Berkowitz Oliver Williams Shaw
2600 Grand Blvd. Ste. 1200
Kansas City, Missouri 64108

Mr. Steven L. Manchel
Mr. Michael G. Donovan
Manchel & Brennan, PC
199 Wells Avenue, Ste. 301
Newton, MA 02459

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1 NOVEMBER 9, 2012 - DAY 5

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Good morning. What do we have this
5 morning?

6 MS. GILMAN: Your Honor, we've got a series of
7 deposition exhibit objections. I've tried to tighten up my
8 presentation and stream line it.

9 THE COURT: Okay.

10 MS. GILMAN: First, with respect to the deposition of
11 Jan Murley. May I hand the Court a stack of exhibits?

12 I've advised Mr. Blegen in advance of the exhibits
13 that are at issue in all of these depositions. The ones I have
14 handed to you are 128, 128A, 319, 334, 335, 360, 361, 363, 364,
15 370 and 371.

16 Mr. Blegen has advised that they are not seeking to
17 admit 335 so that's not at issue.

18 All of these documents relate to Ms. Murley's conduct
19 and her employment negotiations with RPG. And we have
20 discussed that with the Court and briefed that with the Court
21 multiple times why we do not believe that that evidence is
22 relevant. We believe it's unduly prejudicial. These relate to
23 20A through E and her alleged sharing of information with RPG.
24 No evidence has been offered and there is none to attribute her
25 conduct to the defendant here. I understand the Court

1 indicated to plaintiffs that they needed to make a connection
2 between those presentations and the alleged presentation trade
3 secrets. They've only shown the slides that are the same in
4 each but have not made any connection between them. And, in
5 fact, despite any apparent overlap in the information, the fact
6 that Ms. Murley's testimony today will be she got the
7 information she had from Hallmark. She took it with her. She
8 did not get any information from defendants whatsoever. And
9 she will say that unequivocally. There has been no contrary
10 evidence in the case to suggest that she got it from any source
11 other than what she's claiming. In fact, they sued Ms. Murley
12 on the basis that she had, in fact, retained it from Hallmark.
13 Accordingly we would object to all of those exhibits coming in.
14 And we previously have been overruled on our objections to her
15 deposition but we don't believe that any of that is relevant.
16 We do believe it is unduly prejudicial.

17 THE COURT: Thank you.

18 MR. BLEGEN: Your Honor, this is the same thing we've
19 discussed several times here. The exhibits here connect the
20 slides that Mr. Maynard testified about the other day as we
21 discussed at length to the transmittal from Ms. Murley. They
22 show that she was, in fact, they have argued and will argue to
23 the jury that RPG hired Jan Murley. This evidence shows that,
24 in fact, Clipper brought her in, negotiated her contract and
25 presented her to RPG as the consultant that they were going to

1 use. It shows they were in the middle of the transmittal of
2 this Exhibit 150, the Power Point information. It shows that
3 Monitor Clipper, without knowledge of RPG, modified her
4 contract to include false language that claimed that she hadn't
5 brought 150 and hadn't shown 150 to anybody after that event
6 had occurred. So that is the nature of the documents at issue.
7 They go directly to Clipper's control of the situation, control
8 of RPG, use of the Hallmark trade secrets, which we've already
9 shown were the same ones that existed in the five Power Point
10 compilations and the cover up which ultimately involved
11 computer erasures and spoliation, which have been addressed and
12 will be submitted to the jury. So we believe all of these
13 documents in that stack should come in.

14 THE COURT: What was the actual involvement of
15 Clipper in the operation of RPG after the closing? I know they
16 consulted. I know there were overlaps in the directors. But
17 what was the actual involvement?

18 MR. BLEGEN: The actual involvement was Monitor
19 Clipper, as we learned yesterday, was, essentially comprised
20 the directorship of the controlling corporations and the
21 operating company. Mr. Yoon and Mr. Young were on it.
22 Mr. Maxwell, who will testify today, was regularly involved in
23 the management of RPG and the operations of RPG. He is the one
24 who negotiated the contract with nxtMove to come in and
25 consult. He's the one who negotiated the contract of Jan

1 Murley to come in and consult. Both of those consulting
2 entities were brought in to and presented to RPG by Monitor
3 Clipper as the consultants they were going to use.

4 As we saw yesterday, Monitor Clipper then filed a
5 claim in bankruptcy saying they had earned all of these
6 hundreds of thousands of dollars in management fees based upon
7 their management of RPG and were ultimately paid those out of
8 the RPG bankruptcy in 2009.

9 MR. MANCHEL: If I may, Your Honor. There was an
10 independent management agreement between RPG and Clipper which
11 is the fees they're talking about. It's a pure consulting
12 contract.

13 THE COURT: Did you say independent?

14 MR. MANCHEL: Yes, Your Honor. The way this works
15 is, I think the testimony was in the case already, I was just
16 going to say of the seven board members of RPG, only three were
17 Clipper and that's done purposely so that the company always
18 retains control. There's no domination by Clipper of RPG. In
19 fact, two of the original owners, if my memory serves me
20 correctly, were still on the board. That's the model.

21 They're trying to make it look like a control issue
22 but the model is that by design Clipper does not control. It's
23 very important I think --

24 THE COURT: The three Clipper people, two founders
25 and owners. Who were the other two?

1 MR. MANCHEL: The other investor, Levine, the
2 original RPG people and then Mark Murray. So the RPG people,
3 the way it's set up and if we have to argue it to the jury, we
4 will. But it's set up by design so Clipper is not in control
5 and that management agreement runs directly between RPG and
6 Clipper for defined services outside the daily operations of
7 Clipper.

8 So Murley is a perfect example of where -- they keep
9 saying Clipper did this, Clipper did that. As a head hunter,
10 Clipper recommended, no question about it, to the head hunter
11 that Murley would be a good candidate for RPG. All of the
12 interviews were done by RPG personnel, the founders, the
13 president, and Levine. All of that stuff. The contract was
14 with RPG. The payments were from RPG. The daily interactions,
15 RPG. So I really, I know they've created the aura, I'll deal
16 with it if I have to deal with it. But those are the facts,
17 Your Honor.

18 THE COURT: All right. I'm going to admit the
19 exhibits. I don't know whether Clipper controlled RPG or not.
20 It seems to me that is the, one of the ultimate questions the
21 jury is going to be asked to decide and I don't know how they
22 decide it without seeing these exhibits. Moreover, I think the
23 use of Hallmark's information some five or six years after the
24 fact shows that they did have some value. And then, finally,
25 to the extent the jury buys the spoliation argument, it could

1 present a basis for the award of punitive damages. So I'll
2 admit them.

3 MS. GILMAN: The next deposition is that of Larry
4 Earley. And in this deposition the exhibits at issue are 122,
5 246, 307, 346, 375 and 376. Also included in the packet that
6 I'm about to hand the Court are 206 and 320. Plaintiffs have
7 indicated they are not seeking admission of 206 or 320.

8 THE COURT: Thank you.

9 MS. GILMAN: All of these documents relate to
10 nxtMove, which was Mr. Earley's employer, and Ms. Murley.
11 Again, they are 20A through E and relate to non-party conduct.
12 There's one in particular that I want to call the Court's
13 attention to. And I have placed that one in the front. It is
14 Exhibit 375. And this exhibit, on the second page, the second
15 paragraph, has a reference that says the first sentence with an
16 extremely limited marketing staff RPG has grown its business to
17 approximately \$100 million. Second sentence, in an effort to
18 double its share from 2 to 4 percent in increased margins, a
19 more deliberate and actual marketing strategy is required.

20 The plaintiffs intend to present for the truth of the
21 matter asserted that there was, in fact, an effort to double
22 RPG's market share from 2 to 4 percent. That is hearsay coming
23 out of this document. There was not a business record
24 foundation laid or any other exception to hearsay. This
25 witness said he did not know where that information came from.

1 That that statement could have come, quote, from discussions or
2 from documents provided by the client or from anywhere. And
3 therefore we object to that. And, again, we also object to all
4 of them on the basis of their undue prejudice and lack of
5 probative relevance.

6 MR. BLEGEN: Your Honor, this Earley evidence,
7 somewhat like what we discussed with Murley, goes directly to
8 RPG's argument which I believe was in statements that they had
9 no control, they did not have any involvement and that 2 to
10 4 percent thing could have been RPG's plan. What 375 shows us
11 and the testimony today from Mr. Earley and Mr. Maxwell will
12 show us is that 375 was drafted before Mr. Earley and nxtMove
13 had any contact of any form with RPG. It was the result of
14 edits provided by Mr. Maxwell to the proposal that preceded
15 Exhibit 375. So the only source, and he does testify he
16 doesn't know precisely where it came from. But he said it
17 would have come from, I can't remember his exact language, but
18 essentially it would have come from materials provided by the
19 people I was talking to. He also testifies, and that's what
20 Exhibit 122 is, that he received that presentation from Chris
21 Casey of Monitor and that presentation bears the footer of the
22 RPG investment presentation prepared by the standing case team
23 back in 2005 which Mr. Maxwell sent to Mr. Casey at Monitor in
24 January of 2006 and was apparently modified, it's not the same
25 text, but the footer is the same, showing it came from the same

1 document. And Mr. Casey provided that to Mr. Early.
2 Mr. Earley used it to draft the proposal, the 2 to 4 percent,
3 in there is what Mr. Yoon testified the other day as his
4 expectations of what they were going to be able to do with the
5 company. This was a month and a half before RPG and nxtMove
6 ever spoke to each other. This is entirely being done by
7 Clipper and Monitor. Has nothing to do with RPG. And we
8 believe it is a business record. It's a letter that was sent
9 by Mr. Earley of nxtMove, received by Mr. Yoon and Mr. Maxwell
10 of Monitor Clipper. And we believe that it should be admitted
11 because it goes directly to issues that are being argued by the
12 defendants in this case.

13 There are two other ones I'd like to highlight on
14 there, well, three, Exhibit 246, 307. The other one may have
15 come up in Murley. They are what are called contact reports by
16 nxtMove. They're documents maintained by Mr. Earley and
17 nxtMove in the ordinary course. I lay a business records
18 foundation for those documents. He testifies they're accurate.
19 He testifies they're created contemporaneously with the events
20 stated in them and that he believes them to be accurate. They
21 reflect contact and communications between Clipper and nxtMove
22 about the very facts in this case. So we believe they are
23 admissible as well. They're not hearsay.

24 MS. GILMAN: If I might, one more on Exhibit 375, to
25 respond to that. The entirety of Mr. Earley's testimony on

1 that exhibit, called business records exception, he identifies
2 it as a presentation that they submitted. That's all. There
3 is nothing about how, whether it's prepared in the ordinary
4 course. There's nothing beyond just simply identifying it as a
5 presentation that was prepared and submitted, period. And as
6 to representation of counsel about where he said that
7 information came from, I quoted the line from Mr. Earley's
8 deposition. And he specifically said, it could have come from,
9 quote, anywhere. He does not know the source of that
10 information. He cannot be a sponsor for its admission.

11 THE COURT: I'm a little concerned about the business
12 record foundation. Although it appears that the parties have
13 stipulated as to foundation unless I'm misreading the exhibit
14 list.

15 MS. GILMAN: I'm not contesting foundation, Your
16 Honor. But I am contesting that it qualifies as a business
17 record with the exception of hearsay which is separate from
18 foundation.

19 MR. BLEGEN: And just to clear that up, this goes
20 back to the conversation I had with Mr. Mesker from the Boston
21 office. When they were doing the stipulations, they read your
22 order to mean that hearsay was not part of the foundation
23 stipulation, it was part of the admissibility stipulation. So
24 I'm not representing and this shouldn't represent that they
25 have agreed that it's not hearsay by stipulating foundation.

1 We had some confusion over the negotiation --

2 THE COURT: I'm glad you cleared that up for me
3 because I considered it to be part of the foundation for the
4 admission of the document.

5 MR. BLEGEN: I just want to make clear, we're not
6 representing that they have said there is no objection on it on
7 hearsay.

8 THE COURT: All right. I will, as to 375 I will
9 listen to the deposition at the appropriate time and the
10 hearsay objection can be re-asserted prior to the admission of
11 the document. I'll have it in context. Otherwise, the
12 exhibits will be admitted.

13 MS. GILMAN: Thank you, Your Honor.

14 The next deposition.

15 THE COURT: Are these depositions we're going to get
16 to before noon?

17 MS. GILMAN: Probably not before noon.

18 MR. BLEGEN: The next two are not actually. I would
19 ask, the issue on O'Toole, we need to look at our copy of the
20 transcript that just arrived. We'd rather take that up very
21 briefly after lunch, if that's okay.

22 THE COURT: Okay. Let's plan on that after the
23 morning session.

24 MS. GILMAN: Thank you.

25 (The following proceedings were had IN THE PRESENCE

1 AND HEARING OF THE JURY:

2 THE COURT: Good morning. Welcome back. Please be
3 seated.

4 Mr. Aisenbrey?

5 MR. AISENBREY: Good morning, Your Honor. The
6 plaintiff calls Steve Levin by videotape deposition.

7 THE COURT: Proceed.

8 (The video deposition is being played for the jury.)

9 MR. AISENBREY: Your Honor, that concludes the
10 deposition of Steve Levin.

11 Next witness is the deposition of Mark Pocharski.

12 MS. GILMAN: Your Honor, may we approach?

13 THE COURT: Yes.

14 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
15 PROCEEDINGS WERE HAD:)

16 MS. GILMAN: The issue with the slides that are being
17 put up to indicate which party has designated the testimony,
18 they're not being put up consistently. And even if they're
19 attempting to put them up consistently, it's really not
20 indicating to the jury which portions were designated by either
21 party and we believe it's misleading. I would like to stop
22 using those.

23 MR. AISENBREY: Your Honor, we've been doing it
24 pretty religiously. Occasionally when there is a context from
25 the other people, we don't switch it but --

1 THE COURT: How would you guys like to stand up when
2 the testimony you're sponsoring is played to the jury? Is
3 there a better way to do it?

4 MS. GILMAN: I don't think it's necessary, the Court
5 said in the order previously I don't think it's important to
6 let the jury know who designated what testimony.

7 THE COURT: You propose to pull them out?

8 MR. AISENBREY: We just listened to 45 minutes of
9 testimony about 35 of it was irrelevant, had nothing to do with
10 the case, designated by them. I don't think because Mr. Blegen
11 called it, Blegen in the deposition asked questions that we're
12 asking the jury to consider that information. I mean, if this
13 was real testimony, their lawyer would have to stand up and ask
14 those questions and that's why we think those are appropriate
15 and they're not that big of deal. Frankly --

16 THE COURT: Here's what we'll do. We'll leave them
17 in. If during the playing of any deposition you think it's
18 late or it's misleading to the jury, stand up and we'll stop
19 the deposition. You come up here and I'll instruct the jury.

20 MS. GILMAN: Thank you.

21 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

22 MR. AISENBREY: May we proceed, Your Honor?

23 THE COURT: Yes.

24 MR. AISENBREY: This is the video deposition of Mark
25 Pocharski.

1 (The video deposition is being played for the jury.)

2 THE COURT: Stop. Step up.

3 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
4 PROCEEDINGS WERE HAD:)

5 MS. GILMAN: I wasn't going to, there are a few
6 issues, frankly, I was not going to bring to your attention
7 until the last one came up. The answer was not played in our
8 designation. That has happened on multiple occasions. We have
9 talked to them about the technical, but it's only happened in
10 our designations and it happened on some questions that were
11 blended together. Made it seem like an answer to a question
12 was responding where there was Hallmark confidential
13 information. That was not the question that had been posed.
14 And as I said, we haven't raised this before and is now at
15 least the third time it happened on our questions.

16 The other thing is Mr. Aisenbrey leaned over to me
17 and offered they would pop the screen up every time we were
18 asking a question and answer, if we wanted them to do that.
19 They had not been doing that previously so it was giving the
20 appearance that they were designated blocks of testimony on a
21 certain subject then just designating on those he offered to do
22 that which is what we wanted. Mr. Blegen told me they would
23 not.

24 MR. AISENBREY: I don't know what Mr. Blegen told
25 you.

1 MS. GILMAN: Then let me just raise the final issue.
2 You can respond to all of that. The objections are still
3 coming through on the tape.

4 MR. AISENBREY: First, Your Honor, I noted one of our
5 answers was not played there because of the editing. I don't
6 know how the answer got missed. I'm happy to, the one I think
7 she's talking about just now had to do with Bill Young. And
8 Bill Young testified at length the other day. I don't know why
9 we bothered to designate that part but with respect to the
10 designations, I don't know what Mr. Blegen said. I asked
11 Ms. Gilman, do you want us, I mean there are times where they
12 would designate what I would call completeness, where there is
13 a long period of our designations and they have six lines then
14 it goes back. I didn't think you wanted us doing this kind of
15 flip flop like that. I thought we were going to do it for
16 large blocks of testimony. I don't know what the topics are.
17 I have actually not, I'm reading this deposition for the first
18 time as I watch it. So the signals aren't designed to have
19 anything to do with topics. I asked Ms. Gilman, do you want us
20 to do every single one or just longer blocks. I'll be happy to
21 do it with every single one. There are occasions like 4 lines
22 designated by the defendant and by the time we get it up and
23 down the lines have come and gone. Nobody will even know what
24 it was. That's what I was trying to avoid.

25 MS. GILMAN: If you were happy to do that, that would

1 solve it.

2 MR. AISENBREY: I'll do every single one.

3 THE COURT: I don't know what you're asking me to do
4 about omitted oral answers. The written answer is on the
5 screen. You know unless you're accusing Hallmark of
6 deliberating doctoring these depositions to their advantage,
7 seems to me it's an inadvertence. I don't know that there is
8 anything that should be done about it until such time as it
9 becomes apparent to everyone that the videos are being
10 doctored. I don't believe that.

11 MS. GILMAN: I don't either, Your Honor. And I only
12 raised it because it was happening again now, today. And I
13 think we've made a record of it that has happened on occasion.
14 If it rises to the level and becomes an issue we believe in the
15 case, we'll bring that back to your attention. I agree with
16 you, I don't think we can ask you to do anything at this point
17 in time. But I would ask, I suppose, for some instruction.
18 The video must be as accurate as possible and --

19 THE COURT: You're asking for an instruction?

20 MS. GILMAN: I want the videos to be as accurate as
21 possible and the objections to come out.

22 THE COURT: Yeah, so do I.

23 MR. AISENBREY: I do, too, Your Honor.

24 THE COURT: Let's make it happen.

25 MR. AISENBREY: I can tell you, Your Honor, staff

1 members are doing this. We're trying to check it now. It's,
2 if they make a mistake, it's not because we directed them.
3 Mr. Donovan's objections are very soft. I think maybe they
4 miss them. I mentioned it to them this morning, these
5 objections have to come out. We'll look --

6 THE COURT: Mention it to her again.

7 MR. AISENBREY: I'll do more than mention it to her.

8 MS. GILMAN: Thank you.

9 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

10 MR. AISENBREY: May we continue, Your Honor?

11 THE COURT: Yes.

12 (The video deposition is continuing to be played for
13 the jury.)

14 THE COURT: Let's go ahead and take our morning
15 break. We'll see you back here in about 15 minutes. Please
16 don't make up your mind yet. We'll be in recess.

17 (The following proceedings were had OUT OF THE
18 PRESENCE AND HEARING OF THE JURY:)

19 MR. AISENBREY: Your Honor, the very last question,
20 the reason I stood up, when they edited they cut the answer
21 off. I proposed to Ms. Gilman when the jury comes back we'll
22 just read the question and read the answer so they get the
23 answer. It was on the screen but they didn't hear him say it.

24 THE COURT: Sounds reasonable to me.

25 See you in 15 minutes.

1 (Recess)

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 MR. BLEGEN: Your Honor, we want to take a minute
5 before the jury was ready to come back to address the state of
6 the depositions and some technical issues that we've been
7 having with them. And just backing up a second. This issue of
8 the designation thing came up last Friday after the jury
9 selection. And at that point in time I tried to explain that
10 we couldn't physically transferring it from one Q and A to
11 another particularly when there is a document being discussed,
12 it would be very difficult to do. We are trying to do that.
13 We're trying to make sure she knows exactly where it happens
14 and all that.

15 What we're running into now and we apologize for the
16 technical issues. This is a hand edit process. When they get
17 the rough cut they have to listen to it and sometimes if you're
18 not exactly right, cut some things off, you might have an
19 objection that stays in. The staff is trying mightily to get
20 it done. Every time we take a break, they stay and she's right
21 now actually listening through, making sure the rest of this
22 deposition is as clean as possible.

23 What we're running into now has to do with Jan
24 Murley. Our plan today was to finish Mr. Pocharski, play Larry
25 Earley. Play Jan Murley. Take lunch. Come back --

1 Yesterday, midday, we received additional edits to
2 Jan Murley from the defendants to their designations which we
3 have tried to incorporate. Last evening we sent them a version
4 which we believed was complete. On the first break they came
5 up to our paralegal and said there are things that need to be
6 changed. Well, we can't physically change those in the time
7 between the first break and when it's to be played. It was
8 suppose to come up in the next segment. We are trying mightily
9 but this morning it's been objection to how we're doing the
10 designations by screens. It's objections because it's not
11 perfect and this is just disruption. We're trying to do the
12 best we can here.

13 I don't know how to deal with the Murley issues.
14 We're trying to figure out if they come up late in the
15 deposition we may be able to start it, play as far as we can,
16 get to lunch then fix those issues over lunch then come back.
17 At this point it's 10:30. We have maybe 10 more minutes of
18 Mr. Pocharski. Mr. Larry Earley is about an hour. Maybe we
19 could take an early lunch, make sure we have cleaned up all the
20 issues over lunch with Ms. Murley and come back. That may work
21 since it's a 4:00 end today. We're trying the best we can but
22 these issues, we've been playing them this way all week and
23 this is the first time they said, well, you have to play
24 designated by Defendant for one Q and A that's between
25 plaintiffs and plaintiffs. Just, technologically, it doesn't

1 work.

2 THE COURT: Well, we could always go back to the old
3 way of doing it. Put you on the witness stand. Let
4 Mr. Aisenbrey, put Charlie on the witness stand. That's an
5 option. What are you asking me to do, Stacey.

6 MS. GILMAN: I didn't think I was asking you to do
7 anything at this point.

8 THE COURT: Are you just complaining?

9 MS. GILMAN: No, Your Honor. I didn't ask for this
10 time now. We have been trying to work out these issues. And I
11 did feel it had reached the level today that I needed to bring
12 it to the Court's attention, particularly because we were still
13 having some of the problems we had seen earlier like objections
14 bleeding through.

15 I have been trying to work those out with counsel.
16 Mr. Blegen asked for the time with you now to talk about this
17 issue with Ms. Murley. I called my colleague, Laura Brooks for
18 it because she's been dealing with that, frankly, behind the
19 scenes. We've not been trying to bring it to the Court to
20 complain or have you take any action on it. There have been a
21 lot of errors in the videos that they've been prepared. They
22 don't match the designations. We're getting these like the
23 night before they're playing or the morning they're playing or
24 whatever. We haven't had a lot of notice. We've done a good
25 job up to today, I think, collectively, working together to try

1 to make them up to what the designations are. This is the
2 first time hearing of this issue with the Murley video. And
3 I'm mindful of the fact this is something that is done by hand,
4 not an easy process. Sounds like Mr. Blegen has a solution
5 that he's proposed to the Court. I don't have a problem with
6 it if you're going to start playing it, the break before --

7 Ms. Brooks was suppose to be on a call with our
8 counsel in Boston to try to resolve this. I think it's
9 question for Mr. Blegen, what he's asking for the Court to do.

10 MR. BLEGEN: The issue arises, Your Honor, is that I
11 don't want to be done with, I wanted them to raise it now. We
12 don't want to be done with Mr. Earley at 11:30, have not
13 finished resolving the issues with Murley and have no place to
14 go on with because I'm not even sure if the next live witness
15 will appear. He's a former employee of the defendants. We
16 anticipated he'd come up after lunch. He may be here, he may
17 not. I'm not sure. I just wanted to raise it now and explain
18 why we are where we are. We didn't receive Murley's final
19 changes, confirmed from the defendants, until seven or eight
20 last evening and we're doing the best we can to get that issue
21 solved.

22 THE COURT: In the absence of a specific request from
23 the defendants for some action, I'm going to do nothing. I am
24 going to ask you to please be careful and try to honor the
25 agreement that you've reached with the defendant, try to play

1 the video and the audio together, not omit the audio. We'll
2 see how it goes. If we need to take an early break for lunch,
3 that's fine with me, because we're letting the jury go early
4 today. So I would say start Murley and if you get to a problem
5 area, let's stop, take lunch. Perhaps you can fix it over
6 lunch. Is that okay?

7 MR. BLEGEN: Thank you, Your Honor.

8 THE COURT: Kelly?

9 MR. AISENBREY: Your Honor, when the jury gets back
10 I'll read the last question and tell them what the answer was
11 and proceed to the next section. I think that's acceptable.

12 MS. GILMAN: That's fine.

13 (The following proceedings were had IN THE PRESENCE
14 AND HEARING OF THE JURY:)

15 THE COURT: Please be seated.

16 Ladies and gentlemen of the jury, you will have
17 noticed some problems with the video depositions where an
18 answer is not, you don't hear the answer but you see the answer
19 on the screen. So I'll encourage you to keep an eye on the
20 screen. We've tried to eliminate that. We haven't got it all
21 worked out.

22 In just a moment Mr. Aisenbrey will read you the last
23 question and answer but watch the screen because you'll see the
24 answer to the questions on the screen.

25 There have also been signs go up when ever the

1 defendant has designated depositions and signs go up when the
2 plaintiff has designated depositions. That's just the side
3 that wants you to hear that testimony. Those haven't always
4 gone up promptly but if you watch the screen, you'll be able to
5 tell a difference in the voice of the questioner or simply by
6 virtue of the information that comes through the deposition.

7 Mr. Aisenbrey.

8 MR. AISENBREY: One second, Your Honor.

9 Thank you, Your Honor.

10 Ladies and gentlemen, the last answer to the last
11 question was not, the audio did not play. The question --

12 And I have to back up a second because it has a
13 pronoun, Your Honor, they won't know what it's talking about.

14 There was a series of questions that ended with, is
15 it your understanding that that was the policy, the
16 confidentiality policy at Monitor was up through 2006?

17 ANSWER: Yes.

18 Okay. And you understood that you were to abide by
19 that policy, correct?

20 ANSWER: Yes.

21 And did you endeavor to do so in your dealings?

22 ANSWER: Yes.

23 THE COURT: Okay. Proceed.

24 (The video deposition of Mark Pocharski is continuing
25 to be played for the jury.)

1 MR. AISENBREY: Your Honor, that completes the
2 deposition of Mark Pocharski.

3 THE COURT: Who is next?

4 MR. AISENBREY: Much shorter deposition is Larry
5 Earley. May we proceed, Your Honor?

6 THE COURT: Yes.

7 (The video deposition is being played for the jury.)

8 MR. AISENBREY: Your Honor, that concludes Larry
9 Earley's deposition.

10 We would move the admission now of Defendant's
11 Exhibit 375, Plaintiff's 375 which was, you had indicated you
12 wanted to hear the video.

13 THE COURT: Step up, please.

14 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
15 PROCEEDINGS WERE HAD:)

16 THE COURT: That's the July 28?

17 MR. AISENBREY: Yes, sir. I think the objection was
18 it had a section in it that talked about the 2 to 4 percent
19 increase on page 2. During the video the defendants offered
20 and put in evidence, Defendant's Exhibit 1072, which has the
21 same line so we don't think there's any basis to exclude 375.

22 MS. GILMAN: Your Honor, first of all, on 375 I do
23 want to treat this separately but in 375 his testimony very
24 clearly did not establish a business records exception as to
25 the 2 to 4 percent. He only, he said, no, it could have come

1 from anywhere. It started as an RPG initiative. That's his
2 testimony on page 36 of the deposition. The exhibit that they
3 are referring to is an exhibit they put into evidence in the
4 deposition. Then was questioned about subsequently in the
5 questioning by Mr. Manchel. We were going to ask that the
6 language from that exhibit be redacted from it. We are not
7 opposing the admission of the exhibit. It is the executed copy
8 of this. But we are opposing that paragraph being included in
9 it because there is absolutely no testimony in here that would
10 take that out of the hearsay objection or establish where it
11 came from. And it is unduly prejudicial in the manner in which
12 they plan to use it.

13 MR. AISENBREY: Your Honor, 1072 was stipulated as
14 admissible and that's the document. That has the paragraph in
15 it. They didn't offer it as a document with the paragraph
16 missing.

17 Second, to address the issue of the hearsay
18 objection, near the end Mr. Earley very clearly said that
19 information had to come from RPG.

20 MS. GILMAN: I don't believe that's the testimony.
21 And I would also renew our, I guess I would move to strike now
22 the testimony on the 2 to 4 percent which we had previously
23 objected to coming in to begin with.

24 THE COURT: Let me be sure I understand this. You
25 object to 375. You say that 1072 can come in but you want to

1 redact the portion on the second page that refers to the 2 to
2 4 percent margin increase?

3 MS. GILMAN: Correct.

4 THE COURT: Where is that shown in your stipulation
5 to admit 1072.

6 MS. GILMAN: It is not shown in there, Your Honor.

7 THE COURT: 1072 is identical to 375?

8 MS. GILMAN: It's not identical. It's sent to a
9 different person and it's the executed version.

10 Which is why 1072 has independent relevance because
11 it is the executed copy. 375 is not executed and there is no
12 basis to admit it. Again, we're not opposing admission which
13 is why we stipulated to the admission of 1072. But we would
14 want either that paragraph redacted would be our preference or
15 limiting instruction that paragraph is not to be accepted for
16 the truth of the matter asserted because of hearsay and that
17 paragraph cannot be used in that manner.

18 THE COURT: Anything else, John?

19 MR. AISENBREY: I think they've stipulated to it.
20 But I also think 375 is admissible because it's the same
21 paragraph and it shows that the document which was the initial
22 proposal went to Monitor Clipper.

23 THE COURT: All right.

24 MS. GILMAN: Again, it's being offered for the truth
25 of the matter asserted, not notice. So it cannot cure the

1 hearsay objection. It was sent to Monitor Clipper.

2 MR. AISENBREY: Goes to the point Clipper knows what
3 was being proposed as he said in the testimony, I would have
4 gotten from client and July 28 he was talking to Clipper.

5 THE COURT: 375 will be admitted.

6 MS. GILMAN: I just want to make sure that the record
7 is clear and that we have a ruling. I think I know what your
8 ruling is but that you are also denying our motion to strike
9 the testimony and denying our request for a limiting
10 instruction and request for redaction or alternative request
11 for redaction of 1072?

12 THE COURT: Yes, ma'am.

13 MR. AISENBREY: The next video is Murley. Might, I
14 don't know if you want to stop a little earlier but we'll be
15 able to get the editing done I think.

16 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

17 THE COURT: Because today is a shorter day we'll take
18 an earlier lunch. We'll see you back here about, why don't we
19 see you back here at 1:00. And at that time we'll resume with
20 the deposition of Jan Murley. Don't talk about the case.
21 Don't make up your mind. We'll see you back here.

22 (The following proceedings were had OUT OF THE
23 PRESENCE AND HEARING OF THE JURY:)

24 THE COURT: We'll see you at 1.

25 (Noon Recess)

1 (The following proceedings were had OUT OF THE
2 PRESENCE AND HEARING OF THE JURY:)

3 THE COURT: Is everyone ready?

4 MR. AISENBREY: I am.

5 THE COURT: Are we ready?

6 MR. AISENBREY: I think we are ready, Your Honor.
7 I'm sorry. I didn't know if they had something to take up.

8 (The following proceedings were had IN THE PRESENCE
9 AND HEARING OF THE JURY:)

10 THE COURT: Please be seated.

11 Mr. Aisenbrey.

12 MR. AISENBREY: Thank you, Your Honor.

13 The plaintiff calls Jan Murley by video.

14 (The video deposition is being played for the jury.)

15 THE COURT: Does someone have a phone?

16 MR. AISENBREY: I think it's on the tape.

17 THE COURT: Well, if it's your phone, turn it off.
18 If it's on the tape, let's resume.

19 (The video deposition is continuing to be played for
20 the jury.)

21 THE COURT: Stop the depo, please.

22 MR. AISENBREY: Your Honor, that was -- two lines we
23 left out. Right after I asked Ms. Murley, that refers to
24 Hallmark diary, doesn't it?

25 And she said yes.

1 Then my next question was, a diary study is a
2 research tool?

3 Her answer was, it's a very standard research tool.

4 Then we moved on to something that's you were -- back
5 on the tape and I apologize to the Court.

6 THE COURT: Okay.

7 (The video deposition is continuing to be played for
8 the jury.)

9 MR. AISENBREY: Your Honor, that concludes the
10 deposition of Jan Murley. However there was an omitted, just a
11 short part was omitted. I'll read it with the Court's
12 permission.

13 THE COURT: Go ahead.

14 MR. AISENBREY: For context it was when we were
15 discussing, the context was, let's take a look, if you will, at
16 Exhibit 334. I'm going to jump around a little bit. I
17 apologize.

18 Then by Mr. Manchel, this is a consulting agreement
19 that you signed, right?

20 Yes.

21 And it's a consulting agreement between you and RPG,
22 correct?

23 Yes.

24 THE COURT: Okay. Mr. Manchel, did you have
25 something?

1 MR. MANCHEL: May we approach?

2 THE COURT: Yes. Step up.

3 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
4 PROCEEDINGS WERE HAD:)

5 MR. MANCHEL: Your Honor, at this time we renew our
6 motion to Murley and Earley. As the Court has seen there were
7 three references in this entire -- to the documents brought the
8 information from Hallmark. Each reference making it very clear
9 she provided what ever information she provided directly to RPG
10 or to nxtMove. And each reference made it clear that she and
11 she on her own decided that for whatever purpose she was using
12 it, she thought there was value to it, which was an issue the
13 Court had raised before, that it could be used to show the
14 value of the trade secrets.

15 So what we have here now, after all of this, we have
16 Jan Murley took information from what she claims was a
17 compilation, not the compilation at issue in this case. Jan
18 Murley gave that information to nxtMove for use. NxtMove who
19 was hired and contracted to RPG. Jan Murley who used
20 apparently three slides from this other compilation because Jan
21 Murley thought it had value. It's being put into this case
22 along with a, quote, unquote, former Hallmarker hired by RPG to
23 suggest the value of the compilations that are different than
24 what they're calling compilations.

25 There's been no connection made to the Exhibit 20

1 which has been the fundamental issue we had before the Court.
2 And the Court has asked repeatedly that Hallmark show a nexus
3 between Exhibits 20A through E, and at the end there and
4 Exhibit 20, and I would submit that at this time having gone
5 through Earley and having gone through Jan Murley, that no such
6 nexus would be made. So we move to strike both on the basis of
7 Your Honor's order on this issue. And we think under 403 it is
8 unduly prejudicial to the defendants.

9 MR. AISENBREY: Your Honor, to begin with it has
10 several different issues that are relevant. No. 1, as
11 Mr. Earley testified, he was hired by Clipper people to do this
12 work. It shows the control of Clipper. You may remember two
13 days ago there was testimony by, I think, Mr. Yoon that Monitor
14 Consulting would not work with Clipper as of the middle of 2006
15 because they were in litigation with Hallmark. And so that's
16 when, as Ms. Murley just testified, she was approached by
17 Monitor Clipper to be the CEO of RPG. And later today
18 Mr. Levine will testify he was fired by Monitor Clipper people
19 as CEO to be replaced by her. When she is brought in as a
20 consultant she used, I think it's six or seven, not three pages
21 from that Power Point she was just discussing, came, identical
22 to pages that are in the exhibit, what we're calling Exhibit
23 20. You guys, it's actually 487. I think you saw the other
24 day how they compare. When Mr. Maynard was on the stand we
25 compared two slides. What we were comparing, slides from

1 Ms. Murley's presentation to the Hallmark cases that are at
2 issue here. Ms. Murley comes in there. She uses the stuff.
3 She tells them how useful it is. She had previously sent it to
4 the Clipper people who then bring her in, the same time bring
5 her in to work with the Monitor, excuse me, the RPG people. It
6 shows that the material they were using still had value.

7 Now, Mr. Manchel cross-examines her and she says
8 because she's not exactly happy about Hallmark, she says I
9 think this was old. But she also admits it allowed them to
10 start five steps down the road in the research they were going
11 to do. It shows continued use. And Clipper knew it had
12 continued use. When they couldn't use Monitor Group, they
13 brought in Ms. Murley to do it.

14 MR. MANCHEL: Your Honor, brought to show, No. 1,
15 this information came from Clipper and No. 2 that it had value
16 to Clipper.

17 THE COURT: I'm not sure about the first one, Steve,
18 but go ahead.

19 MR. MANCHEL: I believe your order, Your Honor, I
20 could be wrong but I believe the order was that it had to be a
21 nexus to Exhibit 20, the Monitor material that was accessed or
22 used or given to Clipper. And I believe the representation to
23 Your Honor before we went into this whole Murley exercise was
24 they would show a nexus to Exhibit 20. So what we have here is
25 we have, I don't care if it's 3 slides or 6 slides, it's from

1 an earlier compilation. It was taken by Jan Murley with no
2 involvement whatsoever from Clipper or Monitor. It was
3 purportedly used by Jan Murley directly with RPG, not with
4 Clipper, not with Monitor. And it's being offered to show the
5 value of something else. And more pointedly the value to
6 Clipper. There is nothing in here that talks about the value
7 to Clipper.

8 And Your Honor was very clear that if at the end of
9 the day this exercise is about 20A through E, it's not
10 relevant. And we think it's not relevant. And it's unduly
11 prejudicial. I mean when I read Your Honor's order from last
12 week, I don't know what else it would apply to other than
13 something like this. I believe, in fact, Your Honor, the
14 motion that, the motion on which your order was based, there
15 was an argument that they would show this information came from
16 Clipper. I'm almost certain that was the basis of the argument
17 they made before Your Honor because there was some discussion
18 in it about a letter that wasn't part of anything else. And
19 your instruction was, you're going to need to show this was
20 from Clipper, if my memory serves me correctly, and their
21 response, we will, and now we're done. It shows from Jan
22 Murley from Hallmark. Nobody at Clipper saying this has value.
23 I have your order, Your Honor, if it helps.

24 And as I said, I'm almost certain that the briefing
25 in advance of Your Honor issuing this order, the argument made

1 by Hallmark is we will show that this information might have
2 come from Clipper.

3 MR. AISENBREY: Your Honor, we talked about this last
4 Friday or Monday. We talked about this order. And at that
5 time you said if the slides are the same slides, that was
6 sufficient. I think, I won't repeat everything I've said but
7 the 403 argument, the undue prejudice would have to
8 substantially outweigh relevance, not undue prejudice. I think
9 it shows the relevance of the use. It shows the part about
10 where she got her contract revised to act like there was
11 something that didn't happen that had happened was all handled
12 by Mr. Maxwell who is a Clipper person, whose primary contact
13 with RPG, quote, unquote, was Mr. Maxwell, a Clipper person.
14 She testified he was her primary contact. He put her in touch
15 with the people at nxtMove.

16 MR. MANCHEL: At most, Your Honor, I'm sorry. I'm
17 sorry.

18 My issue, Your Honor, is how does Jan Murley,
19 deciding that material from another compilation might have use
20 in an exercise that she's conducting, how is that relevant to
21 whether Clipper thought the information was relevant and of
22 value? Even if you accept the notion that you can use pieces
23 from a different, quote, unquote, compilation to show the value
24 of the compilation at issue. All the actions are being taken
25 by Jan Murley and all of the information comes from Hallmark.

1 Not from any of the exercises that are at issue in this case.

2 THE COURT: Hallmark's theory of the case is that
3 Clipper people put into action the use of Ms. Murley,
4 Ms. Murley's experience and knowledge in order to help grow
5 RPG's revenue and its value ultimately. Ms. Murley brought
6 information that is, some of it in any event, is a part of the
7 five presentations. That indicates to me that she and Clipper
8 believed that those presentations had some value. Moreover the
9 revised contract which changed the terms and included
10 warranties and representations that were not a part of the
11 original contract, suggest, and a jury might conclude, a guilty
12 state of mind. And that Clipper was trying to cover up what it
13 had done previously with respect to Murley. I think all of
14 that is relevant. And it is a jury issue as to whether the
15 plaintiff should, the plaintiff's theory should prevail or the
16 defendants. The evidence is in the record. I'm not going to
17 strike it. Motion overruled.

18 MR. MANCHEL: Thank you, Your Honor.

19 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

20 THE COURT: Mr. Blegen?

21 MR. BLEGEN: Your Honor, the plaintiffs call Paul
22 Maxwell.

23 THE COURT: We'll work until about 2:30, find a
24 breaking point then we'll come back, folks, and work until 4.
25 Then you're excused.

1 PAUL MAXWELL, PLAINTIFF'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. BLEGEN:

4 Q Good afternoon, Mr. Maxwell.

5 A Good afternoon.

6 Q Just to get a little background here. Do you have a
7 bachelors in business administration from the University of
8 Kansas, correct?

9 A That's correct.

10 Q And you spent some time out east. You joined Monitor
11 Clipper Partners in 2003, is that right?

12 A That's correct.

13 Q Then in 2010 you left Monitor Clipper and the east coast
14 and came back here to Kansas City?

15 A Yes.

16 Q And what is the name of your current employer?

17 A It's called Great Range Capital.

18 Q I'll hand you Exhibit 649 and ask you if you can tell me
19 what the picture in 649 is?

20 A This is a picture of the office building in Cambridge,
21 Massachusetts, where Monitor Clipper Partners was located.

22 MR. BLEGEN: Your Honor, I offer 649.

23 MR. DONOVAN: No objection.

24 THE COURT: 649 is admitted without objection.

25 BY MR. BLEGEN:

1 Q Okay. So as you indicated this is the picture. We've
2 heard about Cambridge. We've heard about the building. But
3 this is a picture from the street of the Monitor office
4 building in Cambridge, Massachusetts, correct?

5 A That is correct.

6 Q And it's about a 5-story building, right?

7 A That's correct.

8 Q And you were, when you were with Monitor Clipper you were
9 on the fourth floor, I believe, correct?

10 A That's correct.

11 Q And Monitor Consulting, the company we've also heard about
12 today, is also headquartered in that building, right?

13 A That's correct.

14 Q Now, you started as an associate with Monitor Clipper,
15 correct?

16 A Correct.

17 Q But by the time you left you had moved up to principal?

18 A That's correct.

19 Q What is the level of principal?

20 A At what point in time?

21 Q How about in 2005?

22 A In 2005 I believe it was managing director.

23 Q And you were an associate still when RPG was acquired,
24 right?

25 A That's correct.

1 Q And during the course of 2006 you were elevated to the
2 level of principal, right?

3 A That's correct.

4 Q And you were also, during the time there, an investor in
5 Fund II which we've also heard about?

6 A Yes.

7 Q And one of your jobs at Monitor Clipper was to participate
8 in the due diligence and analysis of acquisitions for Monitor
9 Clipper, correct?

10 A That is correct.

11 Q And in that role you had interactions and worked with the
12 standing case team?

13 A That's correct.

14 Q And that standing case team would provide services to
15 Monitor Clipper and its evaluation of those potential
16 acquisitions, right?

17 A Yes.

18 Q And that standing case team would also provide services to
19 portfolio companies of Monitor Clipper, correct?

20 A In certain instances, yes.

21 Q And in 2005, the year we've been talking about, you
22 interacted during that with the standing case team, right?

23 A I did.

24 Q So the jury can understand where you fit into this
25 process, by the time you got involved, well, let's start over.

1 You were ultimately involved in the RPG due diligence process,
2 right?

3 A That is correct.

4 Q But by the time you got involved the purchase price was
5 already arrived at, correct?

6 A That is correct.

7 Q And you don't have any knowledge then or recollection as
8 to the, how that \$305 million purchase price was arrived at, is
9 that fair?

10 A No, I wouldn't say that's fair. No. I was working on the
11 transaction more actively in its later stages but I was
12 attending meetings before that in which the transaction was
13 discussed.

14 Q But you don't recall anyone ever explaining to you
15 specifically how the \$305 million number was derived, is that
16 correct?

17 A I'd say that's correct. I don't recall anyone explaining
18 it to me specifically.

19 Q And you were not a member of that investment committee
20 when the RPG acquisition came up for decision, right?

21 A I was not.

22 Q But you did attend that investment committee meeting,
23 right?

24 A I did.

25 Q You recall and we heard earlier today, you do recall Mark

1 Pocharski speaking at that investment committee, right?

2 A I do recall.

3 Q Now, your primary work on the pre-closing side, the
4 acquisition and due diligence side was around the financing of
5 the deal, right?

6 A Yes.

7 Q And you worked with Credit Swiss or Credit Swiss First
8 Boston as it's been referred to, right?

9 A I did.

10 Q And Credit Swiss was the primary lender for the deal who
11 then brought in other lenders to buy part of the debt to spread
12 it around, right?

13 A That's correct.

14 Q And you were in that role, directly involved with
15 discussions with those rating agencies that we've heard some
16 about, right?

17 A I was.

18 Q And you were involved in preparing the materials that were
19 presented to the rating agencies?

20 A I was.

21 Q And so everyone may recognize the names, those were like
22 Moody's and Standard and Poors. Those were the ratings
23 agencies at issue here?

24 A That's correct.

25 Q And the purpose of the credit agency meetings was so they

1 could assign a rating to the RPG entity that was being
2 acquired, right?

3 A Yes.

4 Q And that rating would be used by some lenders in
5 evaluating whether to buy that debt, right?

6 A That's right.

7 Q And you were also directly involved in discussions with
8 lenders, right?

9 A That's correct.

10 Q And you were involved with preparing the materials for
11 those discussions, right?

12 A I was.

13 Q And in those meetings that a Power Point presentation was
14 made for the lenders, correct?

15 A For certain of those meetings, yes.

16 Q And it's also your understanding that those lenders would
17 ask Credit Swiss questions about the transaction, right?

18 A Yes. I believe that's true.

19 Q And Credit Swiss would turn to Clipper or RPG and ask the
20 question to them so Credit Swiss could give that information to
21 the lender, right?

22 A Yes. In some circumstances, yes.

23 Q And, in fact, you had a series of discussions with Credit
24 Swiss that covered a lot of different topics related to the RPG
25 acquisition, right?

1 A That's right.

2 Q And you don't recall any instances in which you told
3 Credit Swiss that you would not answer a question, right?

4 A I don't recall that. No.

5 Q And in answering those questions you would not have lied
6 to Credit Swiss. Is that fair?

7 A No, I don't believe I would.

8 Q And you would not have intentionally given an inaccurate
9 answer to Credit Swiss. Is that fair?

10 A I believe that's fair.

11 Q Now, the deal closed in December of 2005, right?

12 A Yes.

13 Q I have put in front of you Exhibit 235. And that is an
14 e-mail that starts December 7, 2005 with an e-mail from Travis
15 Metz to Charles Yoon and April Evans seeking information,
16 seeking a one pager and a memo to the limited partners about
17 the RPG acquisition, right?

18 A That's right.

19 Q And then you forwarded that to Peter Kim on the 7th of
20 December, right?

21 A That's correct.

22 Q And on later that day Peter Kim responded to you and
23 that's the e-mail at the top of the page, right?

24 A That's right.

25 Q And he says, hey, Paul, see attached. Grant and I already

1 put together a good working draft of the more detailed LP memo
2 a few weeks back so we should be in pretty good shape there.
3 Then attached to this, the first attachment is the one pager,
4 right?

5 A Yes.

6 Q And this is a draft at this point in time, right? This
7 isn't the final version, is that fair?

8 A Yes.

9 Q So in this version, which is a memo to the advisory board
10 members from Monitor Clipper Partners L.L.C. dated December 8,
11 2005, regarding acquisition of Recycled Paper Greetings. Is
12 that correct?

13 A Yes.

14 Q I'd like to turn to the bottom paragraph. In this
15 paragraph of this draft provided by Peter Kim to you, it states
16 MCP emerged as the winner of a competitive auction process
17 based on management's preference, the value we are able to
18 bring to bear and Monitor Group's deep knowledge of the
19 greeting card industry. That's what it says in this draft,
20 right?

21 A That's right.

22 Q It goes on, the investment in RPG is highly consistent
23 with our strategy of investing in companies where Monitor Group
24 expertise provides confidence in a firm's market position and
25 growth opportunities. That's the next sentence, right?

1 A Yes.

2 Q It goes on, Monitor had historically worked for one of the
3 major greeting card manufacturers and MCP was able to glean
4 industry insights from Monitor Group. Is that the next
5 sentence?

6 A It is.

7 Q And, finally, this knowledge base will enable MCP to work
8 with the company to identify growth prospects, operational
9 improvements and brand marketing strategy. Is that the last
10 sentence of that draft?

11 A It is.

12 Q I'm handing you now Exhibit 236. And in this e-mail, it
13 starts on December 9, 2005 with an e-mail from Peter Kim to you
14 with a carbon copy to Charles Yoon, right?

15 A Yes.

16 Q And Peter says, the attached draft incorporates yours and
17 Charlie's comments. Let me know if you have any other
18 comments.

19 Are you with me?

20 A Yes.

21 Q Okay. And then you forward that on to Bill Young later in
22 the day on the 9th. And you say, Bill, attached is a brief
23 memo that Travis and April would like to send to the advisory
24 board.

25 Now that's referring back to the one pager that we

1 just looked at a moment ago, right?

2 A I believe so, yes.

3 Q And, finally, Bill Young responds to you at 5:52 that
4 evening, given Hallmark's gratuitous shot across the bow, would
5 like to tone down the Monitor industry angle in the final
6 paragraph.

7 Do you see that?

8 A I do.

9 Q Now, Hallmark had expressed concerns at that point about
10 some reports in the press that Monitor Clipper was acquiring
11 RPG. Are you aware of that?

12 A I'm aware of that now, yes.

13 Q Do you think Hallmark would be rightfully concerned about
14 someone gleaning industry insights from its trade secrets?

15 A I guess it depends on the nature of the insights and
16 whether or not they were from trade secrets.

17 Q Okay. What about, do you think Hallmark would be
18 rightfully concerned about someone using Hallmark trade secrets
19 as a knowledge base with which to assist a competitor of
20 Hallmark's? Do you think that would concern Hallmark?

21 A If they were trade secrets then, yes, I believe that if
22 they were specific to Hallmark, then yes.

23 Q Well, or even if they were Hallmark's trade secrets about
24 the industry, those would still be trade secrets, right? They
25 would potentially be harmful to Hallmark if they were used as a

1 knowledge base to assist a competitor in that industry, right?

2 A Potentially. Without knowing what the trade secrets are,
3 it's difficult to answer that question.

4 Q To be clear, Mr. Young talks about toning down the Monitor
5 industry angle. But no one ever said that the final paragraph
6 was untrue. Is that right?

7 A I don't recall if anyone said that.

8 Q But the only thing that is said in the e-mail from Mr.
9 Young is just simply to tone down the Monitor industry angle in
10 that final paragraph, right?

11 A Yes, that's what it says in his e-mail.

12 Q Now, I placed in front of you Exhibit 190. And here we
13 are continuing to discuss one pagers and information to be
14 provided about the acquisition, right?

15 A Right.

16 Q And then on January 2, 2006, the second e-mail on the
17 list, right there, you're e-mailing Charlie Yoon and you're
18 telling him, I'd revisit this to tone down the Hallmark factor,
19 right?

20 A Yeah. I believe it said to water down the Hallmark
21 factor.

22 Q Oh, you're right. Water down the Hallmark factor. Thank
23 you for clarifying.

24 And here we are on January 4, 2006, in another
25 version of the one pager. Actually the sentence at the bottom

1 is added here about contacting Charlie Yoon with questions.

2 Oh, I'm sorry.

3 So where in the first instance there was a comment in
4 the first sentence MCP emerged as the winner based on
5 management's preference, the value we are able to bring to bear
6 and the Monitor Group's deep knowledge of the greeting card
7 industries. In the January version, all they say is, MCP was
8 introduced to the company by former Monitor Consulting Partner
9 Tom Keiser whose brother Mike Keiser was one of the owners of
10 the RPG, right?

11 A I see that. Yes.

12 Q Whereas in the first version it talks about the investment
13 being highly consistent with the strategy of investing in the
14 companies where Monitor Group's expertise provides confidence
15 in the firm's market position and growth opportunities. Now it
16 talks about the Keiser family plus Monitor's, MCP's
17 relationships with retailers and potential new customers and
18 expertise in consumer products rather than the industry.
19 Enable us to emerge as the preferred partner, right?

20 A I see that.

21 Q Whereas in the original version when it talked about
22 Monitor having historically worked for one of the major
23 greeting card manufacturers and Monitor Clipper being able to
24 glean industry insights from Monitor Group and that knowledge
25 base will enable MCP to work with the company to identify

growth prospects, operational improvements and brand marketing strategy, now it just says it's highly consistent with our strategy of investing in companies where Monitor Group and MCP can add value post transaction. We are confident that we will work with the company to identify growth prospects, operational improvements and brand marketing strategies.

So would you agree that you were able to sufficiently water down the Hallmark factor from the original version to the final version?

A Well, to me as I look at these two exhibits, they're to two different audiences. So one is to the advisory board members and the subsequent one to is Monitor leaders.

Q Do you believe that the language in 235, the original one, stayed in the version 2, whatever version may have gone off to the advisory board members or do you believe the language in the watered-down 191 was what was finally disclosed to people outside the deal?

A I believe that the second version here is more closely what went out to the advisory board members, yes.

MR. BLEGEN: Your Honor, this is as good a time as any if you would like to break?

THE COURT: All right. Let's go ahead and take about 15 minutes, folks. We'll see you back here at 2:45. We're in recess.

(Witness temporarily excused.)

1 (Recess)

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Kelly, would you see if the jury is
5 ready?

6 (The following proceedings were had IN THE PRESENCE
7 AND HEARING OF THE JURY:)

8 THE COURT: Please be seated.

9 Mr. Blegen, you may resume.

10 MR. BLEGEN: Thank you, Your Honor.

11 PAUL MAXWELL, RESUMED

12 CONTINUED DIRECT EXAMINATION

13 BY MR. BLEGEN:

14 Q Okay. Mr. Maxwell, when we took our break we were at
15 about December, the closing of the transaction. Do you
16 remember that?

17 A I do.

18 Q Okay. Now, you continued to have a role with regard to
19 RPG after the acquisition closed, didn't you?

20 A That's right.

21 Q And were you secretary to one of the boards, if I recall
22 correctly?

23 A That's correct.

24 Q What board?

25 A I believe the name of the entity was RPG Investment

1 Holdings L.L.C.

2 Q Now, I've handed you Exhibit 422 which was discussed
3 yesterday. And if you'll turn to schedule 1 which is about the
4 fifth page of the exhibit. And there's been discussion about
5 these entities. But which one of these was the one you were
6 secretary to?

7 A It would be the bottom one, RPG Investment Holdings L.L.C.

8 Q And that's the operating company, well, I'm sorry. So the
9 Recycled Paper Greetings operating company, the entity that
10 actually sold greeting cards reported up to that holding
11 company, correct?

12 A Yes. Effectively, yes.

13 Q And the board that you were secretary to, now just to be
14 clear, it indicates there that Mr. Yoon of Monitor Clipper is
15 officially the secretary as far as the officers are concerned,
16 right?

17 A That's right.

18 Q But as far as the board proceedings, you were the
19 secretary to the board. You attended the meeting and you
20 performed the function of the secretary, right?

21 A That's correct.

22 Q You keep meeting minutes. You make sure the books and
23 records of the business were correct, right?

24 A I did keep the minutes, yes.

25 Q And there's been some discussion. Who is Mr. Calhoun

1 there on the board of directors of the investment holdings
2 entity?

3 A Bob Calhoun or Robert Calhoun worked with Monitor Clipper
4 Partners L.L.C.

5 Q He had a position at Monitor Clipper Partners, right?

6 A He did, yes.

7 Q So he wasn't from the acquired entity side. He came from
8 the Monitor Clipper side to serve on the board of the holding
9 company, right?

10 A That's correct.

11 Q And was he on the board from the beginning of the
12 operations of RPG as an entity under Fund II?

13 A I don't recall definitively. He may have come on after
14 the fact.

15 Q Now, do you know, did he leave the board of the holding
16 company during the time you were still involved with the
17 holding company?

18 A He may have, I don't recall.

19 Q Your best recollection today is that he remained on the
20 board the whole time you were involved with that board?

21 A I don't recall him leaving that position.

22 Q And did you eventually become a board member of that
23 entity?

24 A I did.

25 Q And so you attended the board meetings that were held for

1 the holding company, right?

2 A I did, yeah. I attended the meetings for, many of the
3 meetings for RPG Investment Holdings L.L.C.

4 Q Now, while we're on that document, I want to ask you a
5 question I believe you will be able to answer for the jury.
6 Yesterday Mr. Manchel in questioning Dr. Serwin and, obviously,
7 you weren't here. You wouldn't know what the exact testimony
8 was but he made a suggestion to the jury that RPG did not own
9 any retail stores. But, in fact, RPG did own retail stores,
10 right?

11 A I believe either RPG or an affiliated entity or the former
12 owners had an interest in retail stores at some point.

13 Q It was a subsidiary but it was a subsidiary called
14 Barnyard Industries, right?

15 A That sounds familiar, yes.

16 Q And if you'll turn, actually, back to the third page of
17 the exhibit itself. If you'll highlight paragraph 12.

18 Now, paragraph 12 in this, what's been identified as
19 a memorandum of closing, indicates company, small i, acquired
20 from the sellers all of the outstanding capital stock defined
21 as the Barnyard shares of Barnyard Industries, Inc, an Illinois
22 corporation. That's the entity that held the retail stores
23 that you're familiar with, right?

24 A I don't recall specifically but I believe that could be
25 the case, yes.

1 Q Your best recollection is Barnyard Industries was the
2 retail store arm of RPG, right?

3 A That's right.

4 Q If you'll turn back to schedule 1, just two pages later in
5 the document. And look up the second entity on schedule 1, is
6 in fact, the entities we've been discussing, Barnyard
7 Industries, right?

8 A I see that, yes.

9 Q That one indicates that Bill Young and Charles Yoon are
10 directors of that entity, right?

11 A Yes.

12 Q And Bill Young and Charles Yoon are also the sole officers
13 of that entity, the retail store entity, right?

14 A I see that, yes.

15 Q Next, just to close the loop on something, a document,
16 this will only take a moment. I'm going to hand you Exhibit
17 62. Now, this is at the bottom an e-mail from you to the
18 entirety of Monitor Clipper as well as Grant Brown, Megan Kahn,
19 Jeff Pauker, Jonathan Rider and Daniel Yang on December 5,
20 2005, right?

21 A That's right.

22 Q And the individually listed folks are Monitor employees,
23 right? Well, put it this way. Were they all standing case
24 team members at this time?

25 A Many of them were. The only one I don't recall is if

1 Daniel Yang was on the case team or not at that time.

2 Q Here you are December 5, the date of closing, announcing
3 the closing of the company, right? The closing of the sale,
4 the acquisition, right?

5 A That's right.

6 Q And so you're telling everybody at the company MCP
7 provided 105 million of equity along with the 26 million the
8 founders put in, right?

9 A Correct.

10 Q And this is the financing part you worked on, CSFB, that's
11 Credit Swiss, right?

12 A That's right.

13 Q Provided a first term lien loan of 120 million and a
14 second lien loan of 77 million, right?

15 A That's right.

16 Q So that's the debt, the leverage that was used along with
17 the contributions of Fund II to acquire the entity, right?

18 A Right. And the contributions of the two sellers as well
19 but yes.

20 Q Thank you. You're right. And now you're noting at the
21 bottom, we're having the first board meeting in Monitor Clipper
22 offices this coming Thursday on December 8, right?

23 A Yes.

24 Q And among other topics the board plans to discuss ways in
25 which the company can benefit from Monitor Group as well as

1 MCP's due diligence findings?

2 A I see that, yes.

3 Q And that board you're referring to is the one you were to
4 become secretary of, right?

5 A That's correct.

6 Q Now, I placed in front of you, Mr. Maxwell, Exhibit 113.
7 And that's identified, well, could you tell us what that
8 document is?

9 A This says to RPG board of directors from MCP. December 5,
10 2005. Subject is agenda for RPG board of directors meeting on
11 December 8, 2005.

12 Q And this is the agenda circulated for the meeting you
13 referenced in your announcement of the acquisition, right?

14 A That looks like the case, yes.

15 Q And down the first item on the list is board appointments
16 and the second one on the list is meeting secretary. And
17 that's you, right?

18 A I believe that's the case. Yeah, I believe that was at
19 this meeting, yes.

20 Q And the 6th item on the list is identified information
21 sharing, paren, RPG, MCP and Monitor, right?

22 A I see that, yes.

23 Q But you don't recall today what on that topic was
24 discussed at the board meeting, is that accurate?

25 A No, I do not.

1 Q Mr. Maxwell, I've handed you what has been marked as
2 Exhibit 115. Can you identify that document for me?

3 A This is an e-mail from me on December 15, 2005 to Len
4 Levine with a copy to Charles Yoon and to Peter Kim and the
5 subject is agenda for RPG MCP call.

6 Q And who is Len Levine?

7 A At the time Len Levine was the CEO of RPG.

8 Q And it lists two attachments. One is RPG work plan, Len.
9 And the other is RPG work plan, management. Do you see that?

10 A I do.

11 Q Attached to that exhibit there is one memo to Len Levine
12 that says RPG work plan, confidential. Do you see that?

13 A I do.

14 Q To be fair only one of the two attachments appears in this
15 e-mail?

16 A Yes.

17 Q But the only difference between the two is that the other
18 version only has the first part of the memo and everything from
19 confidential down doesn't appear. Is that the difference
20 between what was originally attached to this e-mail?

21 A I don't recall. I don't have the other version in front
22 of me.

23 MR. BLEGEN: Your Honor, we'd offer Exhibit 115.

24 MR. DONOVAN: No objection.

25 THE COURT: Without objection 115 is admitted.

1 BY MR. BLEGEN:

2 Q Go to the second page. So this is what we were just
3 talking about before the jury saw it. This is the memo to Len
4 Levine which is the confidential Len Levine version of whatever
5 the memo is for that meeting, right?

6 A Okay.

7 Q At the bottom of that page it starts the section
8 confidential, Len Levine only, right?

9 A Yes.

10 Q Okay. Going to the next page, one of the things, the
11 bottom point, one of the things that is on tap for this
12 conversation which this was being sent to Mr. Levine in advance
13 of a conference call the Monday following Thursday,
14 December 15, right?

15 A That appears to be right, yes.

16 Q And the final thing on the list that you want to talk
17 about with Len Levine only is Monitor Group, right?

18 A Yes.

19 Q And the middle part of that has to do with marketing,
20 introduction of Monitor executives and strategy, right?

21 A I see that.

22 Q So at least as of December 15, 2005, discussions of
23 Monitor was on the agenda of things to do with Len Levine and
24 RPG, right?

25 A Yes.

1 Q Now I'm handing you, Mr. Maxwell, Trial Exhibit 241. That
2 is a, it starts out with an e-mail from Chris Casey to Bill
3 Young. Then Bill Young forwards that to you on January 20,
4 2006, right?

5 A Yes.

6 MR. BLEGEN: We offer Exhibit 241, Your Honor.

7 MR. DONOVAN: No objection.

8 THE COURT: 241 is admitted without objection.

9 BY MR. BLEGEN:

10 Q Now, the first e-mail in the chain, Chris Casey on
11 January 19, 2006, is e-mailing Bill Young. And the subject is
12 RPG investor presentation. And he's saying, Mr. Young. Bill,
13 haven't received the investor presentation deck yet. When
14 should I expect to receive it. Do you see that?

15 A I do.

16 Q And then when Mr. Young forwards that to you, he says,
17 Paul, could you send an electronic version of our investment
18 committee presentation to Chris this PM? Double check with me
19 before hitting the transmit button. I'm checking a legal
20 question on this. Do you see that?

21 A I do.

22 Q You did, in fact, send the RPG investor presentation to
23 Chris Casey later that day, right?

24 A I don't know whether it was that day but I do recall that,
25 yes.

1 Q So you can't, sitting here today, recall January 20, 2006.
2 But you do remember you did send the investment presentation
3 for the RPG acquisition to Chris Casey in this time period,
4 right?

5 A Yes.

6 Q Now, just before you testified the jury heard from
7 Mr. Larry Earley, actually this morning, they heard from Mr.
8 Larry Earley. You're familiar with nxtMove in that it's a
9 consulting firm that works in market research, right?

10 A I am.

11 Q Now, and you, in fact, had involvement with Mr. Earley
12 during the summer of 2006 with regard to some potential
13 consulting on the RPG business, right?

14 A Yes. I recall discussions with Larry Earley. I didn't
15 recall they were in the summer but yes.

16 Q And I've handed you Exhibit 306.

17 Well, I'll offer 306.

18 MR. DONOVAN: No objection.

19 THE COURT: 306 is admitted without objection.

20 BY MR. BLEGEN:

21 Q Now, in Exhibit 306, on the bottom of the first page is
22 the transmittal information on an e-mail from you to Mr. Earley
23 on July 21, 2006. Do you see that?

24 A I do.

25 Q And going on to the second page at the top, you say to

1 him, thanks again for your proposal. Please take a look at the
2 attached document which reflects our thoughts and suggestions.
3 Do you see that?

4 A I do.

5 Q So at this point in time you had received a draft proposal
6 from Mr. Earley of nxtMove, right?

7 A Yes, I believe that's right.

8 Q And you had made comments on it and were sending it back
9 to Mr. Earley for nxtMove to incorporate their comments into
10 the next draft of that the proposal, right?

11 A Yes.

12 Q Now, there was discussion about, I'm going to hand you
13 Exhibit 375. There was discussion this morning about Exhibit
14 375 or earlier this afternoon, perhaps. And this is a proposal
15 from nxtMove to Charles Yoon of Monitor Clipper Partners,
16 July 28, 2006, correct?

17 A Yes.

18 Q So this is seven days after you have reviewed and
19 commented on a prior draft, this proposal is sent from nxtMove,
20 right?

21 A That's right.

22 Q And at the time of these proposals going back and forth in
23 July of 2006, RPG was not yet involved with nxtMove, right?

24 A No. I believe so.

25 Q I'm sorry?

1 A No, I don't believe so.

2 Q And, in fact, RPG did not get involved with nxtMove until
3 late August 2006, right?

4 A I don't recall the specific date.

5 Q Well, does August 21, 2006 ring a bell?

6 A It doesn't. That could very well be the date, I just
7 don't recall when it was.

8 Q Let's see if this helps. We'll do our best to be precise.
9 You have in front of you Defendant's Exhibit 1021. And on the
10 last page of Exhibit 1021 you are writing to Larry Earley on
11 August 8, 2005 asking him if he would be available to come meet
12 with RPG on August 21, right?

13 A August 8, 2006 to meet on the 21st.

14 Q You're right. I apologize if I misspoke.

15 A It's okay.

16 Q Mr. Earley responds and says he's available. He asked you
17 a question, is this to discuss our proposal or potentially kick
18 off the project? So he wants to know the status, right?

19 A Yes.

20 Q And so you respond and you're telling him that you're
21 getting a schedule. It will be about an hour. You're
22 identifying for him the RPG people that he'll be meeting for
23 the first time, right? Mr. Levine, Mr. Murray and Mr. Stassen?

24 A Yes.

25 Q So it was, in fact, Clipper and not RPG who actually

1 brought nxtMove into the equation for consulting with RPG,
2 right?

3 A Well, Clipper had initial meetings with nxtMove and then,
4 obviously, then there were subsequent meetings with RPG. So
5 Clipper did have some of the initial meetings, yes.

6 Q In fact, received proposals, commented on the proposals,
7 received revised proposals, all before RPG was involved with
8 nxtMove, right?

9 A What I don't recall is whether or not there was any RPG
10 involvement prior to this August 21 meeting but yes.

11 Q But if Mr. Earley believed there had been no prior
12 meetings with RPG, would you have any reason to dispute that
13 testimony?

14 A No, I would not.

15 Q Now, after the nxtMove involvement, nxtMove's contact, Jan
16 Murley was brought in to be a consultant with regard to RPG,
17 right?

18 A Yes. I don't recall specifically when she was brought in
19 but yes.

20 Q And prior to that she was being discussed as a possible
21 CEO of RPG, right?

22 A Again, I don't recall when exactly those conversations
23 happened in sequence but I do recall discussions about the
24 possibility of her being a potential CEO.

25 Q And you thought Jan Murley's experience in the greeting

1 card industry should be helpful in the context of consulting
2 with RPG, right?

3 A I believe that's correct, yes.

4 Q In the course of her consulting work you did not tell Jan
5 Murley that you didn't want her to have or bring anything from
6 her time at Hallmark with regard to that consulting work,
7 right? You don't recall telling her that? You don't recall
8 telling her, don't bring anything from Hallmark?

9 A I don't recall verbally having a conversation like that
10 with her, no.

11 Q Now, just want to close the loop on a few things so, I'm
12 going to hand you both Exhibit 128A and Exhibit 150. They have
13 both been discussed. Now 128A is an e-mail from Jan Murley to
14 Paul Maxwell, Charles Yoon, Larry Earley, Ed Stassen, Emma
15 Reece, Mary George and Len Levine on October 31, 2006, right?

16 A Right.

17 Q And attached to that is an agenda for a meeting on
18 October 31 and a Power Point presentation, right?

19 A Yes.

20 Q And just so we're clear, if you look at Exhibit 150 and if
21 you need a moment to compare them, the Power Point presentation
22 that has been discussed previously as Exhibit 150 is the same
23 one that is attached to the e-mail that you received
24 October 31, 2006, right?

25 A Should I flip through both of them?

1 Q Whatever you need to do to be comfortable answering the
2 question.

3 A Yes, they appear to be the same.

4 Q You can put those aside. Next, Mr. Maxwell, I'm handing
5 you two exhibits. One of which you may be familiar with, the
6 other one I know you will not. But we'll get to that shortly.
7 The shorter one is Exhibit 204. That was discussed earlier
8 today. And that is an e-mail from October 20, 2006 from Jan
9 Murley to you and Mary George and Charles Yoon titled nxtMove
10 proposal discussion, right?

11 A Yes.

12 Q And that was identified by Ms. Murley earlier today. But
13 I want to talk a little bit with you about some of the content
14 in here. Now, if you'll look for me --

15 And, Cindy, if you can on the left-hand side on 487
16 go to page 99. And then highlight for me the bullet points
17 under demographic trends in the middle of 204.

18 I will tell you, Mr. Maxwell, it may be a little
19 easier if you look at that computer screen or the big screen
20 because sometimes the print is pretty small on these
21 documents.

22 Now, what Ms. Murley is sending to you in Exhibit
23 284, this first part on demographic trends, the first bullet
24 point, historically greeting card unit declines have centered
25 on erosion among women under 45. Do you see that statement?

1 A I do.

2 Q If you look at the chart, there is a line for young
3 couples, I'm sorry, and parents with kids and households older,
4 middle, young, that both show decline in women under 45 in the
5 market?

6 A I'm sorry. Could you repeat that?

7 Q Well, let's, actually I think it makes more sense to
8 combine it with the next one. From 1999 onwards the greatest
9 erosion has shifted to women 45 plus who account for about
10 35 percent of all card sending and are the fastest growing
11 consumer segment. Now, if you look at the top line, on the top
12 line you'll see that it's showing that for 1999 to 2000 the
13 greatest erosion has been among couples, singles, 45 plus,
14 right?

15 A I see that, yes.

16 Q And the final bullet point, the only segment showing an
17 increase in unit sales is younger singles under 35. That blue
18 line, in fact, reflects that young, middle, singles, there is
19 an increase in sales going across the years in the chart?

20 A I see that.

21 Q Next on the left, if you'll move to page 45. I'm sorry.
22 44. And blow up that chart, greeting card penetration and
23 trends. Then blow up both charts on the left.

24 What she's telling you in this part of her e-mail,
25 91 percent of households participate in the category. And if

1 you look to the far left of the green bar chart, it, in fact,
2 shows 91 percent total participation, right?

3 A I see that.

4 Q The next line down, birthday has 78 percent household
5 penetration. That shows that in the green bar chart. Birthday
6 has 78 percent household penetration, right?

7 A Yes, I see that.

8 Q All other occasions and relationships enjoy 25 to
9 49 percent, which is, roughly there are a few that are 23 but
10 that's the range that is shown in the green bar chart, right?

11 A I guess the only discrepancy I see is penetration versus
12 participation. I don't know if that's the same or not but,
13 yes, I see that.

14 Q Okay. You don't know that it's different. You're just
15 noting they are different words?

16 A Yes.

17 Q And then she goes on to say the largest declines, 16 to
18 22 percent, are in Easter, Christmas, baby, girlfriend,
19 Mother's Day and Valentine's Day. Do you see that?

20 A I do.

21 Q That corresponds with the orange bar chart on the
22 right-hand side of the page, right?

23 A Yes. I see overlap, yes.

24 Q And I'm not going to go through all of the bits and pieces
25 on here but if you'll go to the page 45 of the Power Point and

1 page 2 of Exhibit 204. And the second, right below the first
2 paragraph or so there is the consumer buying process is
3 anchored in the middle grid.

4 And then if you'll blow up the whole thing all the
5 way down to the yellow box.

6 It's talking about the more expected occasions for
7 inner circle and outer circle relationships. That's what is
8 shown on the color chart, right?

9 A I see that.

10 Q And more expected inner circle amounts to 45 percent of
11 card volume. If you just follow the chart, more expected inner
12 circle down to the yellow box, it's 45 percent, percent of
13 total paper volume, right?

14 A I see that.

15 Q More expected outer circle, she indicates is 34 percent
16 card volume and that's what it shows on the chart, right? Just
17 following down, less expected inner circle is 11 percent,
18 right?

19 A Yes.

20 Q Then less expected outer circle is 10 percent, right?

21 A Yes, on less expected outer circle, yes, I see that.

22 Q Now, I want to hand you Exhibit 400, Mr. Maxwell. And if
23 you need to refer to 204, that's fine, but this is the same
24 document, the same e-mail that Jan Murley sent to you on
25 October 20, 2006 with the information we've just been going

1 through a moment ago, right? The font looks a little
2 different. I think formatting must have gone away at some
3 point.

4 A Yes. It appears to be the same e-mail, yes.

5 Q Then in this e-mail in which the materials from Exhibit
6 487, those same numbers appear, right? 204, we just talked
7 about, the information we went through came off of that color
8 Power Point presentation we were just looking at, right?

9 A Sorry. You asked me if 204's numbers match the 400
10 numbers.

11 Q No. The 204 matches the color Power Point slides we were
12 just talking about on the screen. I'm just confirming we just
13 talked about it, right?

14 A Yes.

15 Q Sorry. I apologize if I confused you, sir. And so you,
16 you're a Clipper employee at this time, right?

17 A I am.

18 Q And Ed Stassen is a Recycled Paper Greetings employee,
19 right?

20 A That's correct.

21 Q And so here on October 20, 2006 in this e-mail you, a
22 Clipper employee, are providing Hallmark information to Ed
23 Stassen, an employee of RPG, right?

24 A I'm providing information that was provided by Jan Murley.

25 Q So if that is Hallmark information, you are, in fact,

1 providing Hallmark information to Ed Stassen of RPG, right?

2 A If it were Hallmark information, yes.

3 Q Now, in this same time period or shortly after the October
4 time period you were involved in preparing and having Jan
5 Murley execute a consulting agreement, right?

6 A That's correct.

7 Q I'm going to hand you exhibit, Defense 1070. That is an
8 e-mail from you to Jan Murley on November 6, 2006, regarding
9 the RPG consulting agreement, right?

10 A Yes.

11 Q You're indicating to her that you asked, I'm sorry, you
12 say, we asked our counsel to draw up a brief consulting
13 agreement that I've attached below. Do you see that?

14 A Yes.

15 Q The counsel you're referring to is the Weil Gotshal firm,
16 right?

17 A I believe that's correct.

18 Q Next I'm going to hand you Exhibit 313. And that is --

19 MR. DONOVAN: Your Honor, could we approach?

20 THE COURT: Sure.

21 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
22 PROCEEDINGS WERE HAD:)

23 MR. DONOVAN: I just want to make sure I note for the
24 record, I object to this Murley document. Seems like they're
25 going into, I know the first couple have been ruled already in

1 these. I don't want to have to keep interjecting and
2 interrupting him.

3 THE COURT: Unless the exhibit sheet shows
4 admissibility is stipulated to it, I'm admitting them over your
5 objection.

6 MR. DONOVAN: Okay. I'll tell you each time.

7 THE COURT: No. You don't need to. If you want to
8 you can.

9 MR. DONOVAN: No, that's fine. I didn't want to
10 interrupt his examination or cause more attention on the issue
11 already. I just wanted to make sure we're all on the same
12 page.

13 THE COURT: If admitted at all, they're admitted over
14 your objection.

15 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

16 MR. BLEGEN: Maybe and if I haven't already, I'll
17 offer Exhibit 313.

18 THE COURT: 313 will be admitted over defendant's
19 objection.

20 BY MR. BLEGEN:

21 Q Exhibit 313 that you have in front of you, is the executed
22 version of the initial consulting agreement from November 2006,
23 right?

24 A I see the agreement signed by Jan Murley, yes.

25 Q At some point however a concern was raised about materials

1 that had been received from Jan Murley, right?

2 A That's correct.

3 Q And I'm going to hand you Exhibit 334. And that Exhibit
4 334 is you on January 17, 2007, forwarding to Jan Murley a
5 clean and black-lined version of the consulting agreement,
6 right?

7 A Right.

8 Q And you're stating in your cover e-mail, you'll see that
9 the attached agreement proposes extending the period of time
10 beyond 12/31/06, right?

11 A Yes.

12 Q But there were also additional terms added to that
13 consulting agreement, right?

14 A That's right.

15 Q And those additional terms were about the possession and
16 use of materials related to a prior employer, right?

17 A Yes, that's right.

18 Q Okay. And, in fact, that revised version was ultimately
19 executed by Ms. Murley, right? Those versions that I have in
20 front of you are not executed but do you remember that those,
21 in fact, were executed?

22 A Yes, I do.

23 Q And in this revision you worked directly with the
24 attorneys at Weil Gotshal on the issue of needing the new
25 contract, right?

1 A Yes.

2 Q That was Patrick O'Toole that you worked with, right?

3 A Yes.

4 Q Now, you worked with RPG throughout 2006, right?

5 A Off and on throughout 2006.

6 Q You had other responsibilities but RPG was one of your
7 responsibilities during 2006, right?

8 A Yes.

9 Q And on top of your ordinary salary you earned a bonus for
10 2006, right?

11 A Yes.

12 Q Your bonus for 2006 was \$125,000, right?

13 A I don't recall that but --

14 Q Well, Mr. Maxwell, I'm going to show you a document that
15 the purpose I'm showing it to you is to see if that might help
16 refresh your recollection. If you would look at the third page
17 of that document. And there is a, I'm going to direct you to a
18 part where your name appears, right?

19 A Yes.

20 Q And ask you to read to yourself what is under your name?

21 A Yes.

22 Q When you're done if you could tell me?

23 A Yes, it says the bonus amount.

24 Q I'm not going to ask you to read it. I'll ask you just
25 read it to yourself.

1 A Okay. Okay.

2 Q Does that refresh your recollection that you received a
3 \$125,000 bonus for 2006?

4 A Yes.

5 Q Thank you.

6 You can set that aside. Actually I'll take that back
7 to avoid confusion.

8 Okay. Your computer at the time of the RPG
9 acquisition was a laptop, right?

10 A That's right.

11 Q And you had saved some documents on your hard drive of
12 that laptop, right?

13 A Yes.

14 Q You created documents or you created a folder on your C
15 drive for the RPG acquisition, right?

16 A I believe that's correct.

17 Q You received e-mails about RPG due diligence in the course
18 of your work, right?

19 A That's correct.

20 Q And you received electronic documents that were related to
21 due diligence, right?

22 A I think that's correct.

23 Q And you created electronic documents that were related to
24 due diligence, right?

25 A That's correct.

1 Q And you received e-mails after the acquisition closed
2 about RPG management issues, right?

3 A That would be correct.

4 Q And we looked at a few of them a moment ago, right?

5 A Correct.

6 Q You received electronic documents about RPG management,
7 right?

8 A Yes.

9 Q And you created electronic documents about RPG management,
10 right?

11 A I believe that's correct.

12 Q And you received e-mails from Jan Murley?

13 A I did.

14 Q And you received electronic documents from Jan Murley?

15 A I did.

16 Q You created electronic documents related to Jan Murley and
17 her work, right?

18 A I don't know that I did.

19 Q You may or may not. You don't recall today, is that fair?

20 A I don't.

21 Q Now, earlier in the case there was a discussion about, it
22 was called an image and purge process. But you remember in
23 January of 2007 a computer vendor in connection with Patrick
24 O'Toole of Weil Gotshal gathered electronic evidence from your
25 computer, right?

1 A I didn't recall the specific timing but, yes, I do recall
2 that happening.

3 Q Okay. And your understanding is that your computer was
4 imaged at that time, a copy was made of the computer at that
5 time, right?

6 A Yes.

7 Q Now, Mr. Maxwell I'm handing you Exhibit 475.

8 I would offer Exhibit 475 at this time, Your Honor.

9 THE COURT: 475 is admitted over defendant's
10 objection.

11 BY MR. BLEGEN:

12 Q Now, 475 if you go to the bottom of that first page, it's
13 a one pager. It's that same January 17 e-mail that we
14 discussed a moment ago about the consulting agreement, right?
15 The clean and black-line version?

16 A Yes.

17 Q But in that e-mail the final sentence was I'd like to
18 discuss this with you when you are available for a brief call?

19 A Yes.

20 Q And then Jan Murley responds, thanks for reaching out to
21 me. I'm available Thursday. And then this is Wednesday,
22 January 17, 2007, you respond, let's plan on 10:00 a.m.
23 tomorrow. So you're setting up the conversation for Thursday,
24 right?

25 A Yes.

1 Q And you're telling her that you'll call her landline
2 unless you prefer otherwise, right?

3 A Yes.

4 Q And so you had a call on January 18, 2007, with Jan Murley
5 at least according to these records, right?

6 A According to this, yes.

7 Q Then your image was made on January 25, 2007. Does that
8 sound about right?

9 A I don't recall that date.

10 Q Do you recall that Jan Murley's computer was imaged on
11 January 29, 2007?

12 A No. I don't recall the specific dates.

13 Q And prior to that date, I believe we discussed this in
14 your deposition, you said you may or may not have deleted the
15 document off your computer. You just don't recall. Was that
16 your memory at that time? Is that your memory today?

17 A I'm sorry. For what time frame are you referring to?

18 Q Okay. Prior to the date of your computer image, when ever
19 that was, and I understand sitting here today, you don't
20 remember exactly when the computer person showed up to copy
21 your computer. But is it accurate to say you may or may not
22 have deleted documents off of your computer. You just don't
23 recall. Is that your memory here in 2012?

24 A Yes. I would say through my normal course of day-to-day
25 business I would add files, delete files, yes.

1 Q But isn't it true, sir, that on January 24, 2007, the day
2 before your computer was to be imaged, you ran a document
3 erasure secure delete program called Shredder on your computer?

4 A I don't recall running Shredder on that day.

5 MR. BLEGEN: Pass the witness, Your Honor.

6 THE COURT: Mr. Donovan.

7 CROSS-EXAMINATION

8 BY MR. DONOVAN:

9 Q Hello, Mr. Maxwell.

10 A Hello.

11 Q I want to go over some, start with some of the things that
12 Mr. Blegen had shown you which were these e-mails from Jan
13 Murley. And then he skipped forward since there was a concern
14 that was raised. So I just want to go back. When you received
15 the e-mails from Jan Murley did you have any knowledge that
16 they contained Hallmark confidential information?

17 A I did not.

18 Q Did you have any knowledge that they contained any
19 Hallmark information?

20 A I did not.

21 Q Mr. Blegen asked you when you had your initial
22 conversations with Ms. Murley, he asked you, did you tell her
23 specifically not to bring with her any information from
24 Hallmark. Do you recall that?

25 A I recall him asking me that, yes.

1 Q And your response was you didn't specifically recall
2 telling her that, correct?

3 A Correct.

4 Q Why is that?

5 A I just don't remember having a specific verbal
6 conversation on that topic that he cited in his question.

7 Q When ever you hire someone do you always tell them do not
8 bring confidential information into my office?

9 A No.

10 Q Why is that?

11 A In a business setting and dealing with other
12 professionals, I would assume it's their obligation to know
13 what is confidential, what is not confidential, just like it's
14 my obligation to know if I'm bound to any type of
15 confidentiality and be mindful of that.

16 Q And when did you first hear of an issue with respect to
17 anything that Jan Murley had brought to RPG as part of her
18 consultancy for RPG?

19 A The first time I recall it being raised as a concern is
20 from a phone call with Ed Stassen at RPG.

21 Q And Ed Stassen, what was his position at RPG?

22 A He was the chief financial officer at RPG.

23 Q What concern did he raise?

24 A He raised concern about whether any of the materials that
25 Jan had shared were sensitive in any way, that RPG shouldn't be

1 seeing them.

2 Q And what did you do in response to that?

3 A I recall speaking with both Charles Yoon and Bill Young at
4 MCP, Clipper, and subsequently we, some subset of us, I don't
5 recall exactly who, but some subset of Bill, Charlie and I had
6 conversations with Weil Gotshal, the law firm, on the topic.

7 Q And who at that law firm?

8 A I believe it was Patrick O'Toole.

9 Q And was that what precipitated this imaging of computers?

10 A I believe so.

11 Q And what was the purpose of the imaging the computers?

12 A I don't have a full appreciation for what Weil and the
13 vendor they brought in did but my understanding of the process
14 of imaging a computer is so that you can effectively take a
15 snapshot of all of the information that's available on any
16 given computer and have that log so you can see all of the
17 information and files on that computer.

18 Q So it was to preserve the information that was on the
19 computer?

20 A Yes.

21 Q So you were the person that reached out to Weil that
22 started that process, correct?

23 A Yes. I believe it was either myself, Bill or Charlie,
24 yes.

25 Q And with Mr. Stassen, what did he do to your knowledge?

1 Did he have conversations with Patrick O'Toole as well?

2 A I don't recall if he did or not.

3 Q And did you ever, you, yourself, ever determine whether,
4 in fact, Ms. Murley had brought information from Hallmark that
5 was inappropriate to share with RPG?

6 A No, I did not.

7 Q So what you knew was that there was an issue that had been
8 raised?

9 A That's correct.

10 Q Then you took action by calling counsel?

11 A That's correct.

12 Q Now, another thing back to the question with Ms. Murley,
13 have you spoken with consultants, other consultants that have
14 experience in a certain industry in which you're also doing
15 some work in that industry?

16 A Yes.

17 Q In other words, Ms. Murley was coming from or not coming
18 from but she had previous experience in the greeting card
19 industry, correct?

20 A Correct.

21 Q You were speaking with her about potentially doing work
22 for RPG, correct?

23 A That's correct.

24 Q And my question is, do you have occasion where you speak
25 with other consultants that have experience in a particular

1 industry in which you're looking at?

2 A Yes.

3 Q Placed in front of you is marked as Defendant's Exhibit
4 2001. Do you see that, sir?

5 A I do.

6 Q Do you recognize it?

7 A I do.

8 Q And what is it?

9 A This is a correspondence between myself and Tom Hays from
10 the New England Consulting Group.

11 Q And what is it about, sir?

12 A Tom says, it was a, Paul, it was a pleasure to talk with
13 you earlier regarding the greeting card industry with which
14 we're familiar.

15 THE COURT: Stop. Just a moment.

16 Mr. Donovan, I don't find this exhibit on your list.
17 This is a new exhibit. Defendant's Exhibit 2001.

18 MR. DONOVAN: I'm sorry. 1001.

19 THE COURT: That may explain it.

20 Proceed.

21 BY MR. DONOVAN:

22 Q I'm sorry. So you were saying?

23 A Yes. The e-mail is from Tom Hays of the New England
24 Consulting Group to me. E-mail reads, Paul, it was a pleasure
25 to talk with you earlier regarding the greeting card industry

1 with which we are very familiar. Congratulations on your
2 recent acquisition of Recycled Greetings. I checked our
3 schedule and myself and another of our principals with
4 significant experience in the greeting card business will be in
5 Boston and available on Thursday, March 16. If that matches
6 with your schedule or we're pleased to target another day at
7 your earliest convenience. Cordially, Tom.

8 Q And did you end up meeting with the New England Consulting
9 Group?

10 A I did.

11 Q And with who?

12 A Tom Hays and I believe he brought a colleague of his whose
13 name I don't recall.

14 Q And this was regarding RPG, correct?

15 A That's correct.

16 Q I placed in front of you 1016A which is new. I just took
17 off the first page from 1016.

18 MR. BLEGEN: No objection.

19 THE COURT: Without objection 1016A is admitted.

20 BY MR. DONOVAN:

21 Q Does this Power Point presentation look familiar to you,
22 Mr. Maxwell?

23 A I believe this is the presentation that New England
24 Consulting Group shared with me in the Clipper offices in
25 Boston.

1 Q What was the purpose of the meeting?

2 A It was following up to the previous correspondence I read
3 in regards to one, New England Consulting Group's experience
4 working in the greeting card industry. Two, their experience
5 working with private equity firms and additionally they cite
6 clients they've worked with in the past and industries they've
7 worked in in the past. And this was all in the context of RPG.

8 Q So if you could go to page 16, Jeff. Actually, back it up
9 to page 13. And the next page.

10 And this is a list here. It says private equity
11 clients. Did he talk to you about that, sir?

12 A Yes. This would have been covered in our conversation.

13 Q Then two pages further up. Pages 16, 17.

14 What does this identify?

15 A This is due diligence, which the process we undergo before
16 acquiring a company. That basically it says for our work in
17 private equity due diligence we go well beyond a simple go, no
18 go recommendation to ascertain the key variables, conditions or
19 changes which would transform the acquisition into a go.

20 Q So this would be service that would be provided to a
21 private equity firm prior to an acquisition?

22 A That's correct.

23 Q In this case that wasn't the situation though, correct?

24 A That's correct. This was subsequent to the acquisition.

25 Q So if we go two pages further, page 18.

1 Now, this is post acquisition. That's more what
2 we're talking about in the situation with respect to RPG?

3 A That's correct.

4 Q And then the next page, page 19.

5 That page says greeting cards NECG has extensive
6 experience in the greeting card industry. Twenty plus diverse
7 projects, multiple companies including Hallmark and American
8 Greetings, all channels. This expertise is further reinforced
9 by considerable work with key retailers such as Wal-Mart.

10 Do you see that, sir?

11 A Yes.

12 Q Did they discuss that with you in the meeting?

13 A I believe they did.

14 Q Is that something they were trying to stress was something
15 they could bring to the table?

16 A They were.

17 Q And did they discuss what work they had done for Hallmark
18 or American Greetings?

19 A I don't recall that they discussed specifically what work
20 they had done.

21 Q In that conversation with them did you specifically tell
22 them not to discuss with you anything to do with any of the
23 work you did at Hallmark or American Greetings?

24 A No.

25 Q Why not?

1 A It wouldn't have occurred to me to do that. Again, I
2 would have assumed that they, if they did talk with us about
3 any work they had done with previous clients that they would be
4 thoughtful about what was shared with us.

5 MR. DONOVAN: I'd like to offer that, Your Honor.

6 MR. BLEGEN: Is it in? I didn't hear. We have no
7 objection.

8 THE COURT: You're talking about 1016A was admitted.

9 BY MR. DONOVAN:

10 Q Sir, I want to back up to the discussion of when you
11 became involved with respect to RPG. Can you tell me when was
12 it that you kind of came on the team that would be dealing with
13 RPG?

14 A I don't recall the specific date but, generally, I believe
15 it was in September of 2005.

16 Q And can you tell us, can you tell the jury, we've heard
17 the term due diligence. Can you describe, first off, is there
18 a due diligence leading up to an actual acceptance of a bid and
19 then a due diligence afterward?

20 A Yes. It would be safe to say that due diligence occurs
21 throughout the acquisition process. We, a private equity firm
22 will do due diligence, essentially the investigation the
23 private equity firm undertakes to understand a specific company
24 or investment idea and private equity firm could, it's possible
25 to your question, submit a bid on a particular company or

1 investment idea, continue to do further due diligence, further
2 learnings about a company and then subsequently submit an
3 additional bid based on whatever new information that's been
4 learned in due diligence.

5 Q And if I heard you correctly, you said that your focus on
6 the RPG transaction was with respect to the financing, is that
7 right?

8 A That's correct. I was brought on in September of 2005.
9 Really toward more of the end stages of the pre-acquisition
10 process. And my primary, I guess, work stream was around the
11 financing related to the acquisition.

12 Q Could you describe to the jury what that consists of?

13 A At the time we were going, in addition to putting the
14 private equity fund dollars into the transaction to fund the
15 investment, we were also going to borrow capital from lenders
16 to finance the investment. And as part of that process there
17 is a series of interactions with potential lenders to RPG, the
18 company, and one of my main areas of focus during that time was
19 to interact with those potential lenders, provide them with
20 information about RPG, answer any questions they may have about
21 RPG. And in some cases make presentations to those lenders so
22 they could better evaluate whether or not they had an appetite
23 to loan money to RPG.

24 Q And we've heard talk about models in this case. Describe
25 for me what a model is in a private equity world?

1 A Sure. So a model can mean many different things but for
2 the purposes of, for RPG and the financing process, a model is
3 effectively, it's an Excel spreadsheet where the private equity
4 firm will maintain basically several pages of information,
5 mostly financial information, regarding a company, in this case
6 RPG. So the model will have its financial statements, its
7 income statements, its cost sheet, its cash flow statement,
8 both historically so how RPG had performed in the past. Then
9 also the model Excel spreadsheet would have financial
10 projections for RPG. And the other purpose of the model is to
11 basically capture the transaction itself. So in addition to
12 showing financial projections and different scenarios for RPG
13 we would also show in the spreadsheet how we were going to
14 finance the transaction, how much equity was going to fund the
15 transaction, how much debt would fund the transaction. And
16 ultimately the model usually goes out about 5 years with
17 financial projections that will basically take a set of
18 assumptions that we put into the model around things like will
19 RPG's revenue grow with customer A, customer B, customer C? By
20 how much and when? Will the profitability margins of RPG be
21 consistent or change over time? And what will the various cash
22 flow needs be of RPG over time?

23 Q And are those models what's used with the actual lenders?

24 A That's correct. A significant part of the interaction
25 with the lenders would be using some of the data and numbers

1 that are in that financial model so that the lenders could
2 understand the historical and the projected financial
3 performance for RPG.

4 Q And that would also be, data from that would also be
5 shared with the rating agency, correct?

6 A That's right.

7 Q We discussed earlier and can you describe for the jury the
8 role of the rating agency in the lending process?

9 A Certain lenders will look to the rating agencies which are
10 called S and P or Moody's to provide an evaluation of the
11 particular loan as it relates to RPG, for example. The rating
12 agencies will undertake to evaluate the loan, all of its
13 characteristics, take a perspective on the potential for RPG to
14 realize the financial projections that the lenders are
15 considering when thinking about the loan. And the rating
16 agencies will take that and evaluate the overall transaction,
17 thinking about how the loan looks relative to perhaps other
18 comparable loans in the market and assign a rating or a grade
19 for that loan that will allow certain lenders to rely on the
20 rating agencies and their perspectives to take an opinion on
21 what the rating is ascribed to RPG and will use that as a data
22 point in thinking about whether or not they may want to make
23 that loan to RPG.

24 Q Now, you were involved with the modeling that was done
25 post investment presentation, is that right?

1 A I was.

2 Q And Attorney Blegen gave you a large document there,
3 Exhibit 487?

4 A Yes.

5 Q Have you ever seen that document? Did you use that
6 document in any way to prepare the models? Does that have any
7 RPG related information? Let me move forward. It's going to
8 take too long.

9 A Okay.

10 Q To prepare your models, you're using RPG related
11 information, correct? Is that what you just described?

12 A Yes. The model is an analysis of RPG.

13 Q Do you recognize this document, sir?

14 A I do, yes.

15 Q And at the top it says RPG management projections versus
16 MCP projections?

17 A Yes.

18 Q Is that something that sounds familiar to you as far as
19 the management of RPG had their own projections and Clipper had
20 their own projections?

21 A Yes, that's correct. RPG, as part of selling the company,
22 created its own set of financial projections. Monitor Clipper
23 would evaluate those projections but ultimately derive its own
24 perspective on which projections to use for purposes of
25 analyzing the potential acquisition.

1 Q Is that what is being described in the document where it
2 talks about management is projecting this and, then the next
3 line, MCP is projecting that?

4 A That's correct.

5 Q And are these what you were describing, the factors here
6 where we have different retailers are selling RPG products?

7 A That's correct. This is a list of retailers with which
8 RPG was doing or planned to do business with. And as you said,
9 it lays out some of the assumptions that RPG management had
10 made for their financial projections and then subsequently it
11 lists MCP's different take on management's assessment of the
12 financial projections.

13 Q What is the date?

14 A This is October 7, 2005.

15 Q I'm now handing you what is marked as Defendant's Exhibit
16 487. What is the date on that, sir?

17 A This is October 14, 2005.

18 Q And so is there, are you performing work on these models,
19 the Clipper models during this time period in October?

20 A Yes.

21 Q Is that in preparation for what we discussed the lender
22 meetings and the rating agencies meetings?

23 A Yes, that's correct.

24 Q And what changes are being made to the model?

25 A Well, as we would continue our due diligence, as any new

1 findings come about, we would work to incorporate any new
2 findings into our financial models. For example, if in our
3 analysis we thought that the first customer listed here,
4 Target, if we thought that the sales potential at Target was
5 greater or less than what was in a previous version of the
6 model we would take that new information and put it in the
7 model to have a different result for the financial projections.
8 It was an ongoing interactive process.

9 Q Here it's saying it's comparing a model at the investment
10 committee versus a current model, is that right?

11 A That's correct.

12 Q And within the document it's talking about those
13 alterations that are being made based on new events, is that
14 right?

15 A That's correct.

16 Q So what is happening is you're trying to compare what it
17 looks like today versus what it was like at the time of the
18 investment committee presentation?

19 A That's correct.

20 THE COURT: Mr. Donovan, it's 4:00.

21 How much longer would you, folk, be spending on
22 Mr. Maxwell?

23 MR. BLEGEN: If he was to turn it over to me now
24 maybe about 3 minutes.

25 MR. DONOVAN: I probably have another 20 minutes.

